Filed 6/2/08

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MICHAEL PERLIN et al., Plaintiffs and Appellants, v. FOUNTAIN VIEW MANAGEMENT, INC. et al. Defendants and Appellants.	B193182 (Los Angeles County Super. Ct. No. LC064201)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard B. Wolfe, Judge. Affirmed.

Balisok & Associates, Russell S. Balisok, Steven C. Wilheim for Plaintiffs and Appellants.

Horvitz & Levy, Julie L. Woods, Robert H. Wright; Wroten & Associates, Kippy L. Wroten, Regina A. Casey, and Sarah P. Gates for Defendants and Appellants.

---

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of DISCUSSION, parts I, II, and IV.

INTRODUCTION

In 2002, Helen Perlin (Perlin) had knee replacement surgery at Northridge Hospital. During Perlin's rehabilitation at the Woodland Care Center (Woodland), under which name Summit Care-California, Inc. (Summit Care) did business, Perlin developed a wound on her leg and returned to Northridge Hospital where she subsequently died from pneumonia. Plaintiffs, appellants, and cross-respondents Michael Perlin, David Perlin, and Elaine Crossley (plaintiffs), successors in interest and heirs to Perlin, brought an action against defendants, respondents, and cross-appellants Summit Care, Fountain View Management, Inc. (FVM), Robert Snukal, and Sheila Snukal (defendants) based on Perlin's treatment at Woodland and her death. Plaintiffs' complaint included causes of action for negligence, willful misconduct, fraud, constructive fraud, intentional infliction of emotional distress, elder abuse, and wrongful death.

The trial court granted summary judgment motions by FVM and the Snukals and excluded plaintiffs' evidence that was submitted in connection with the fraud cause of action. The jury returned a verdict in favor of plaintiffs and against Summit Care only on plaintiffs' elder abuse cause of action and awarded plaintiffs $300,000. After remitting the verdict to $250,000 in accordance with Welfare and Institutions Code section 15657, subdivision (b)[1] and Civil Code section 3333.2, subdivision (b), the trial court entered judgment in the amount of $271,711.33, which amount included an award of $21,711.33 in interest on the jury's award for the period from the entry of the verdict until the entry of the judgment. The trial court denied plaintiffs' request for attorney fees.

Plaintiffs appeal claiming that the trial court erred in granting summary judgment to FVM and the Snukals; in excluding evidence related to plaintiffs' fraud cause of action and, in effect, "dismissing" that cause of action; and in denying plaintiffs' request for attorney fees. Defendants cross-appeal claiming that the trial court erred in granting

---

[1] Part of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600, et seq. (Act).)

plaintiffs interest on the jury's award for the period between the entry of the verdict and the entry of the judgment.

We affirm the judgment. In the published portion of this opinion, we hold that in order to recover attorney fees under Welfare and Institutions Code section 15657 (section 15657), part of the Act, the plaintiff must establish by clear and convincing evidence a defendant's liability for neglect, and because causation is an element of liability, the plaintiff must prove such causation under the clear and convincing evidence standard.

BACKGROUND

Perlin, age 90, suffered from a painful arthritic condition in her knees, causing her to have difficulty walking. As a result, in March of 2002, she had total knee replacement surgery at Northridge Hospital. According to one of her doctors, the surgery went "very well"; her doctors expected her to have a full recovery. Two days after the surgery, Perlin's surgeon ordered her to begin therapy including the use of a continuous passive motion (CPM) machine that moves the knee passively in the desired range of motion.

Shortly after the operation, Perlin was admitted to Woodland, a skilled nursing facility, where she received therapy using a CPM machine. Perlin developed a wound on her right posterior calf. Dr. Lawrence Miller testified that the wound was caused primarily by inappropriate use of the CPM machine. Ten days later, Perlin was transferred to the Northridge Hospital for treatment of the calf wound. About a month later, Perlin died from pneumonia. The parties stipulated that the acts and omissions of the employees of Summit Care, doing business as Woodland, were authorized and ratified by Summit Care.

Robert Snukal was a former CEO of Fountain View, Inc., a corporation that operated long term care facilities in California and Texas. Mr. Snukal retired in about February 2002. In March 2002, Sheila Snukal was an executive vice president of Fountain View, Inc. Neither Mr. Snukal nor Mrs. Snukal was an officer, director, or managing agent of Woodland in March 2002; neither had ever rendered care to any patient at Woodland; and neither had ever interacted with Perlin.

The trial court entered summary judgments in favor of FVM and the Snukals. After remitting a jury verdict in favor of plaintiffs against Summit Care, the trial court entered a judgment in favor of plaintiffs against Summit Care, but denied plaintiffs' motion for attorney fees. The trial court also awarded plaintiffs prejudgment interest from the date of the verdict. Plaintiffs appeal various rulings, including the denial of their motion for attorney fees. Summit Care cross-appeals as to the award of prejudgment interest.

DISCUSSION

I. "Dismissal" of Plaintiffs' Fraud Cause of Action

Plaintiffs allege that defendants made various fraudulent representations to the state entity that licenses the nursing facility and that plaintiffs can maintain an action against defendants based on those representations. Plaintiffs contend that under *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066 (*Randi W.*), the trial court erred in dismissing their fraud cause of action. Defendants respond that the trial court did not dismiss plaintiffs' fraud cause of action. Instead, the trial court held that the evidence upon which plaintiffs based that potential cause of action was inadmissible and, accordingly, declined to instruct on that theory. We agree with defendants.

In *Randi W., supra,* 14 Cal.4th 1066, the California Supreme Court decided the circumstances under which "courts may impose tort liability on employers who fail to use reasonable care in recommending former employees for employment without disclosing material information bearing on their fitness." (*Id.* at p. 1070.) In *Randi W.*, school district officers allegedly wrote a recommendation for a former administrative employee without disclosing prior charges or complaints of sexual misconduct against the employee. (*Ibid.*) In his new employment, the employee allegedly molested a student, the plaintiff. (*Id.* at p. 1071.) The Supreme Court held that the employee's former employer owed the plaintiff a duty in making the recommendation because it was reasonably foreseeable that the employee's new employer would not have hired him absent the recommendation, and that the employee, having been hired, might molest or

injure a student. (*Id.* at pp. 1077-1078.) Accordingly, the plaintiff could assert a fraud claim based on the former employer's misrepresentation to the third party. (*Ibid.*)

In *McCall v. PacificCare of Cal., Inc.* (2001) 25 Cal.4th 412, the Supreme Court considered the limited issue of "whether state law claims against a health maintenance organization (HMO), arising out of its refusal to provide services under a Medicare-subsidized health plan, fall within the exclusive review provisions of the Medicare Act requiring exhaustion of administrative remedies. (42 U.S.C. § 1395 et seq.)" (*Id.* at p. 414.) In its discussion, the Supreme Court observed, "[a] provider may make misrepresentations regarding the nature or extent of the services it intends to provide, either in its application for HMO licensure to the California Department of Corporations or in its marketing materials disseminated to potential enrollees. If the injury to the enrollee is foreseeable, a *Randi W.* cause of action or a claim of fraud may be stated." (*Id.* at p. 425.)

In support of their fraud claim under *Randi W. supra*, 14 Cal.4th 1066, plaintiffs sought to introduce into evidence 35 Department of Health and Human Services "Statements of Deficiencies and Plans of Correction" and 13 California Department of Health Services "Applications for Facility License Renewals" to show fraudulent misrepresentations by Summit Care.[2] Plaintiffs' theory of admissibility of these documents was that Summit Care made false representations in the documents, and had it not made such representations, it would have lost its license and gone out of business; thus, Perlin would not have been treated at Woodland and been injured.[3] Plaintiffs argue

---

[2] Plaintiffs later pared down the number of statements of deficiencies and plans of correction to 12 and the number of license applications to five. The trial court ruled this evidence inadmissible for the same reasons it relied on when the evidence was presented in the group of 35 statements of deficiencies and plans of correction and 13 license applications.

[3] The alleged false representation in the statements of deficiencies and plans of correction was the representation that the identified deficiencies would be corrected. The apparent false statement in the license applications was, "I/we accept responsibility to (a) comply with local ordinances concerning zoning, sanitation, building, and other

that the statements of deficiencies and plans of correction and the license applications were admissible because they were the operative acts of fraud.

The discussion of the admissibility of the statements of deficiencies and plans of correction and the license applications occurred over a number of hearings in which the trial court expressed its view of the admissibility of this evidence and the viability of a *Randi W.* claim based on the facts of this case. In the course of those discussions, the trial court observed, "I think that in this case the reference to a *Randi W.* cause of action is respectfully misplaced. [¶] I see a difference between a *Randi W.* cause of action and the facts of that case and the application of that case to the facts and circumstances of this case . . . ." Later, the trial court stated, "I believe that the use of the *Randi W.* argument expanded to this case is misplaced. I think that this concept of reliance in its broadest definition would allow for this kind of a cause of action to be inserted in any case. [¶] And I believe so far I haven't seen any California authority which has extended the *Randi W.* rationale to an elder abuse/wrongful death case whereby, as evidence of reliance, you produce past DHS records."

Plaintiffs' contention that the trial court "dismissed" their *Randi W.* fraud cause of action is based on these and other, similar statements. Notwithstanding its statements, however, the trial court considered and ruled on the admissibility of the statements of deficiencies and plans for correction and the license applications. Had the trial court dismissed the cause of action, it would not have taken such actions. Moreover, plaintiffs do not cite any ruling by the trial court dismissing their *Randi W.* fraud cause of action. Accordingly, in reviewing this claim, we will apply "'[t]he abuse of discretion standard of review [that] applies to any ruling by a trial court on the admissibility of evidence.' (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.) 'Under this standard, a trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial

---

appropriate ordinances; (b) comply with the labor code on employment practice concerning wages, hours, non-discrimination, liability insurance, and working conditions; (c) comply with health and safety codes and regulations concerning licensing and fire safety."

court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' (*Ibid.*)" (*Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 919.) A ruling that is contrary to law would be an abuse of such discretion.

The trial court considered the 35 statements of deficiencies and plans of correction in the following six categories: 1. The failure to assess and note changes in condition. 2. The failure to provide proper care and treatment of pressure sores, development of pressure sores, and progression of pressure sores. 3. The failure to have adequate staff. 4. The failure to respond to call lights. 5. The failure to provide and maintain range of motion studies. 6. The failure to provide individualized care plans. The trial court considered each of the 35 statements of deficiencies and plans of correction – each of which listed multiple deficiencies – in the context of its view of plaintiffs' theory of their case, which theory the trial court described thusly, "The plaintiff's (sic) theory in this case is that the plaintiff's (sic) decedent sustained an injury to the right posterior calf as a result of the continued and contraindicated use of a CPM machine, which injury was not timely assessed or properly assessed, leading to an exacerbation of the wound and the necessity for eventual discharge to a hospital." The trial court found that none of the noted deficiencies – it did not consider each deficiency from each statement – had any relationship to the theory of the harm to Perlin alleged in this case.[4] The trial court ruled that absent such a nexus, the statements of deficiencies and plans of correction were

---

[4] For example, the failure to assess deficiencies included the failure to assess arm swelling and bladder incontinence; the pressure sore deficiencies included the use of improper bed sheets or mattresses; the inadequate staffing deficiencies included the failure to complete weekly summaries for all residents; the call light deficiencies included call lights being out of patients' reach; the failure to provide and maintain range of motion studies deficiencies concerned the failure to provide range of motion exercises to prevent the loss of range of motion during a patient's stay (plaintiffs' claim that the CPM machine should have been turned off and range of motion exercises using the CPM machine should have been discontinued); and the failure to provide individualized care plans deficiencies included the failure to provide or update residence assessments consistent with the requirement that residents be assessed no less than quarterly.

inadmissible. The trial court appears to have excluded from evidence on the same ground the license applications.

Having excluded plaintiffs' evidence on their *Randi W.* fraud cause of action, the trial court refused plaintiffs' proposed instructions regarding that claim. Because there was no connection between the identified deficiencies and alleged false representations on the one hand and Perlin's injury on the other hand, the trial court's exclusion of the statements of deficiencies and plans of correction and the license applications did not constitute an abuse of discretion. (*Employers Reinsurance Co. v. Superior Court, supra*, 161 Cal.App.4th at p. 919.) The statement in *McCall v. PacificCare of Cal., Inc., supra*, 25 Cal.4th 412 should not be read as holding that evidence of a false representation to a state licensing entity – here the Department of Health Services – may be introduced absent a sufficient nexus between the alleged misrepresentation and the alleged injury.

II. Summary Judgment in Favor of FVM, Robert Snukal, and Sheila Snukal

Plaintiffs contend that the trial court erred in granting summary judgment in favor of FVM, Robert Snukal, and Sheila Snukal. Summary judgment was proper.

A. Standard of Review

"We review the grant of summary judgment de novo. (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19 [17 Cal.Rptr.2d 356].) We make 'an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law.' (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222 [38 Cal.Rptr.2d 35].) A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has made such a showing, the burden shifts back to the plaintiff to show that a triable issue of one or more material

facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849, 853 [107 Cal.Rptr.2d 841, 24 P.3d 493].)" (*Moser v. Ratinoff* (2003) 105 Cal.App.4th 1211, 1216-1217.) "In performing our de novo review, we view the evidence in the light most favorable to plaintiffs as the losing parties. [Citation.] In this case, we liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendants' own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor." (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

B. FVM

FVM moved for summary judgment essentially on the ground that it had ceased operations in about March 1998, some four years prior to Perlin's treatment at Woodland in March 2002, and thus it could not have caused, and was not liable for, any of the conduct alleged in the first amended complaint. In support of FVM's motion for summary judgment, FVM submitted the declaration of William Scott who declared that he was the former Director and Chairman of Fountain View, Inc. (not a party in this case) and that he held the same positions with FVM. Scott declared that FVM was incorporated in December 1988 and ceased operations in March 1998. Scott further declared that FVM did not participate in the daily operations of Woodland in 2002 or render any assistance in the provision of care to patients at Woodland in March 2002.

In opposition to FVM's motion for summary judgment, plaintiffs filed objections to Scott's declaration and otherwise argued that a triable issue of material fact exists concerning whether FVM merged into Fountain View, Inc. and continued operations under the name of the Fountain View, Inc. Plaintiffs argued that when one corporation merges into another corporation, the surviving corporation is responsible for the liabilities of the disappearing corporation under Corporations Code section 1107.[5] Even absent a

[5] Corporations Code section 1107 provides, in pertinent part:

true merger, plaintiffs argued, liability may be imposed on the new corporation under the "de facto" merger doctrine.

Plaintiffs also presented evidence that they contended created a factual dispute about whether FVM continued operations after March 1998. In undisputed material fact number 24 from plaintiffs' Additional Statement of Undisputed Material Facts in their Separate Statement of Material Facts in Dispute in Opposition to Defendant Fountain View Management, Inc.'s Motion for Summary Judgment, plaintiffs state, "Fountain View Management, Inc. was in existence and continued to operate in October 2000, and April 2003." As support for that alleged fact, plaintiffs submitted a "Debtor's Disclosure Statement Dated April 22, 2003," from a proceeding in United States Bankruptcy Court in the Central District of California entitled, "In re: Fountain View, Inc. a Delaware corporation, et al." (Case No. LA 01-39678 BB). That disclosure statement provides in pertinent part, "Fountain View, Inc. and its 22 chapter 11 affiliates are hereinafter referred to collectively as the 'Debtors,' or individually as a 'Debtor.'" A footnote identifying the 23 Debtors includes FVM. Also in support of undisputed material fact number 24, plaintiffs cited Scott's deposition testimony in which Scott testified that a purported "Disclosure and Owner Control Interest Statement," dated October 30, 2000, for Hancock Park Care Center that plaintiffs' counsel showed him, listed Fountain View Management, Inc. in response to the question, "Is this facility chain affiliated?"

The trial court granted summary judgment in favor of FVM. As relevant here, the court ruled that "Plaintiffs cannot seek to hold a defunct corporation liable for acts taken

---

"(a) Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them. [¶] . . . [¶]

"(d) Any action or proceeding pending by or against any disappearing corporation may be prosecuted to judgment, which shall bind the surviving corporation, or the surviving corporation may be proceeded against or substituted in its place."

many years after it ceased operations and merged into another corporation." On appeal, plaintiffs repeat their arguments made to the trial court.

In support of their merger argument, plaintiffs cite Corporations Code section 1107 and cases that address the imposition on surviving corporations of the liabilities of disappearing corporations when corporations merge. Plaintiffs' reliance is misplaced. Corporations Code section 1107 concerns the succession of *surviving* corporations to the liabilities of *disappearing* corporations. Thus, if FVM merged into Fountain View, Inc., Fountain View, Inc., the *surviving* corporation, would succeed to FVM's liabilities and would be a proper defendant with respect to such liabilities. Any such merger, however, would not cause FVM, the *disappearing* corporation, to be a proper defendant, for it has, by definition, disappeared. Plaintiffs did not name the surviving corporation.

In their reply brief on appeal, plaintiffs argue that the Owner Controlled Interest Statement dated October 30, 2000, referenced in Scott's deposition testimony, and the "Debtor's Disclosure Statement Dated April 22, 2003," create a genuine issue of material fact about whether FVM "continued operations." Plaintiffs fail to explain how such evidence demonstrates that FVM continued to operate in October 2000 and April 2003, thus creating a genuine issue of fact over whether FVM ceased operations in March 1998.

In concluding their argument, plaintiffs state, "any liability of the FVM was imposed upon its successor corporation, Fountain View, Inc., which later through the bankruptcy proceedings (with which Defendants counsel is more familiar) became the entity known as Skilled Healthcare Group. Therefore, the only issue would have been to substitute the appropriate entity as defendant (a matter which can be handled at any time, including post-judgment) and summary judgment was not appropriate."

To the extent that plaintiffs' conclusion is read as an argument to reverse the summary judgment because Fountain View, Inc. or Skilled Healthcare Group would have been a proper party, the argument fails because it is conclusory and unsupported by citation to the record or to any supporting authority. (*People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284.) Moreover, plaintiffs forfeited the issue by failing to pursue it in the trial court. On February 2, 2005,

while FVM's motion for summary judgment was pending, plaintiffs moved to file a second amended complaint to correct a mistake in a party's name in which they sought to substitute "Skilled Healthcare, LLC" for FVM and Summit Care. In their motion, plaintiffs contended that FVM had changed its name to Fountain View, Inc. and later to Skilled Healthcare Group, Inc. Prior to the scheduled hearing date, plaintiffs withdrew their motion. Having sought and abandoned in the trial court the very relief they apparently seek on appeal, plaintiffs forfeited the issue. (*Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 983 ["As a general rule, a new theory may not be presented for the first time on appeal unless it raises only a question of law and can be decided based on undisputed facts. [Citations.]"].)

Plaintiffs contend that they subsequently requested to amend their first amended complaint. For this contention, plaintiffs rely on the following statement during the hearing of FVM's summary judgment motion by plaintiffs' counsel concerning FVM's status at the time that Perlin was treated at Woodland in March 2002: "I'm saying that if there's a problem with regard to the naming of the corporate entity, then we should be allowed to amend the complaint to allege the correct name based on what we're being told." To the extent that plaintiffs' counsel's statement is construed as a motion to amend their first amended complaint, they have forfeited appellate review of the motion by failing to obtain a ruling from the trial court. (See *People v. Braxton* (2004) 34 Cal.4th 798, 813 ["If the trial court's failure to hear or rule on the new trial motion appears to be inadvertent, the defendant must make some appropriate effort to obtain the hearing or ruling. [Citations.]"]; *Ikuta v. Ikuta* (1950) 97 Cal.App.2d 793, 795.)

Plaintiffs filed evidentiary objections to six statements in Scott's declaration filed in support of FVM's motion for summary judgment: 1. "Fountain View Inc. was a corporation which operated Long Term Care Facilities in California and Texas. Fountain View, Inc. is not a party to this action." 2. "Fountain View Management, Inc., (FVM) which is a party to this action, was originally incorporated in December 1988, but ceased operation in March 1998." 3. "FVM did not render any assistance in the provision of care to the patients at the skilled nursing facility known as Woodland Care Center, in

March 2002." 4. "FVM has not and did not participate in the daily operations of the skilled nursing facility known as Woodland Care Center, in March 2002." 5. "FVM did not participate in the hiring, management or termination of any employee providing hands-on care within the facility known as Woodland Care Center." 6. "FVM did not manage the budget nor monitor the supplies for the facility known as Woodland Care Center in March 2002." Plaintiffs objected to all six statements on the ground that they lack foundation, and to the last five on the ground that they contradict Scott's deposition testimony. The trial court overruled each objection. Plaintiffs contend the trial court erred in overruling their objections.

Any error with respect to the first statement is harmless as the statement is irrelevant to any issue on appeal concerning FVM's motion for summary judgment. Plaintiffs contend that the second challenged statement – that FVM was incorporated in 1988 and ceased operations in 1998 – lacks foundation because Scott testified at his deposition that he based that statement on statements made to him by, and discussions with, "our attorneys," "probably" in-house counsel. Thus, plaintiffs contend, Scott had no personal knowledge to support the statement.

The trial court did not err in overruling plaintiffs' foundation objection to the second challenged statement. (See *DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679 ["We review the trial court's evidentiary rulings on summary judgment for abuse of discretion"].) In *People v. Forman* (1924) 67 Cal.App. 693, the Court of Appeal considered a hearsay challenge to the testimony of a witness in an embezzlement prosecution. The witness testified about the shortage in funds of the victim company based on a review of books kept by the appellant and books not kept by appellant from a company unwittingly used by the appellant in his embezzlement scheme. (*Id*. at p. 700.) The Court of Appeal held, "We are of the opinion that it was not hearsay, for the reason that the witness was testifying to matters within his own knowledge acquired in the discharge of his duty." (*Ibid.*) In this case, Scott's testimony that FVM ceased operations in March 1998 was admissible because Scott, the former Director and Chairman of Fountain View, Inc. and FVM, learned of the date that FVM

ceased operations through statements by and discussions with in-house counsel and thus was "testifying to matters within his own knowledge acquired in the discharge of his duty." (*Ibid.*) Accordingly, the trial court properly overruled plaintiffs' foundation objection.

Moreover, if there were any error, it was harmless. In plaintiffs' objection to the second challenged statement, plaintiffs argue that the evidence shows that FVM merged into Fountain View, Inc. For this proposition, plaintiffs cite Mrs. Snukal's deposition testimony that the statement in her declaration that FVM ceased operations in March 1998 was based on FVM's merger into Fountain View, Inc. If FVM merged into Fountain View, Inc. in March 1998, then it ceased operations in 1998.

Plaintiffs objected on foundation grounds to the remaining cited statements in Scott's declaration because those statements were based solely on Scott's belief that FVM ceased operations in March 1998. As the trial court properly overruled the foundation objection to the second challenged statement, it properly overruled the objection to the remaining challenged statements.

The objection that five of the six cited statements in Scott's declaration contradict his deposition testimony is based on Scott's testimony that in-house counsel informed him that FVM ceased operations in 1998. The statements do not contradict Scott's deposition testimony, and the objection was properly overruled.

C. The Snukals

Mr. Snukal moved for summary judgment arguing, inter alia, that at the time Perlin was treated at Woodland in March 2002, he was a former Chief Executive Officer of Fountain View Inc. (having retired in about February 2002), he had no involvement in the management and control of Woodland, and he had only an investment interest in Woodland. Mr. Snukal argued that he did not participate in the daily operations of Woodland, he never cared for patients at Woodland, and he never interacted with Perlin. Mrs. Snukal moved for summary judgment arguing that she was a director, officer, and employee of Fountain View, Inc. during the relevant time with only an investment

interest in Woodland. Mrs. Snukal also stated that she did not participate in the daily operations of Woodland, she did not care for patients at Woodland in March 2002, and she never interacted with Perlin.

Plaintiffs opposed the Snukals' motions for summary judgment arguing, inter alia, that the Snukals established and implemented the policies and procedures involved in the management and operation of Woodland that caused Perlin's injuries. Plaintiffs contended that the Snukals were responsible for those injuries because even if they had no direct involvement with Woodland in March 2002, a fact that plaintiffs disputed, the Snukals' policies and procedures remained in effect at the time of Perlin's injuries. Also, as with their opposition to FVM's motion for summary judgment, plaintiffs filed objections to Mr. and Mrs. Snukal's declarations.

The trial court granted summary judgment in favor of the Snukals. As relevant here, the trial court held that plaintiffs failed to establish a causal connection between any policy or procedure the Snukals established and Perlin's alleged injuries. The court stated that it appeared that plaintiffs were improperly seeking to attach personal liability to the Snukals solely on the basis that the Snukals were officers or directors, which, the trial court held, was "insufficient to create liability."

"Like any other citizen, corporate officers have a societal duty to refrain from acts that are unreasonably risky to third persons even when their shareholders or creditors would agree that such conduct serves the institution's best interests." (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 506, fn. 12.) "Directors are liable to third persons injured by their own tortious conduct regardless of whether they acted on behalf of the corporation and regardless of whether the corporation is also liable." (*Id.* at p. 504, citing, inter alia, *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.* (4th Cir. 1975) 517 F.2d 1141, 1144 ["'a director who actually votes for the commission of a tort is personally liable, even though the wrongful act is performed in the name of the corporation'"]; *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1381-1382 ["All persons who are shown to have participated in an intentional tort are liable for the full amount of the damages suffered. [Citations.] This rule applies to intentional torts

committed by shareholders and those acting in their official capacities as officers or directors of a corporation, even though the corporation is also liable. [Citations.]"].)

At the same time, "[i]t is well settled that corporate directors cannot be held *vicariously* liable for the corporation's torts in which they do not participate. Their liability, if any, stems from their own tortious conduct, not from their status as directors or officers of the enterprise. (See *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc*. (1970) 1 Cal.3d 586, 595 [83 Cal.Rptr. 418, 463 P.2d 770].) '[A]n officer or director will not be liable for torts in which he does not personally participate, of which he has no knowledge, or to which he has not consented. . . . While the corporation itself may be liable for such acts, the individual officer or director will be immune unless he authorizes, directs, or in some meaningful sense actively participates in the wrongful conduct.' (*Teledyne Industries, Inc.* v. *Eon Corporation* (S.D.N.Y. 1975) 401 F.Supp. 729, 736-737 (applying Cal. law), affd. (2d Cir. 1976) 546 F.2d 495.)" (*Frances T. v. Village Green Owners Assn., supra,* 42 Cal.3d at pp. 503-504.)

On appeal, plaintiffs argue that the trial court erred in granting summary judgment to Mr. Snukal because he could be personally liable for actions he took as a corporate officer, director, or investor and "since evidence was presented that [Mr.] Snukal was responsible for establishing policies and procedures which were in effect at FVM skilled nursing facilities . . . and since those policies and procedures remained in effect though (sic) March 2002, [Mr.] Snukal can be held liable for the injuries suffered by Plaintiffs' decedent as a result of such policies." Similarly, plaintiffs argue that summary judgment in Mrs. Snukal's favor was error because she could be personally liable for actions she took as a corporate officer, director, or investor and because "evidence was presented that [Mrs.] Snukal was responsible for operations of Summit until June 2002 (after Mrs. Perlin's injuries) and that polices and procedures which she formulated remained in effect though (sic) June 2002, [Mrs.] Snukal can be held liable for the injuries suffered by Plaintiffs' decedent as a result of such policies."

In their opposition to the Snukals' motions for summary judgment and on appeal plaintiffs do not cite a specific policy or procedure that allegedly was established or

implemented by the Snukals that caused harm to Perlin. Instead, they refer to policies and procedures generally and speculate that such policies and procedures harmed Perlin. Such speculation is an insufficient basis to defeat summary judgment. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 99 ["'Speculation, however, is not evidence' that can be utilized in opposing a motion for summary judgment. (*Aguilar, supra,* 25 Cal.4th 826, 864; see also *Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161 [1 Cal.Rptr.2d 636] [summary judgment opposition based on inferences 'must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork']"].) As the trial court correctly reasoned, plaintiffs' attempt to hold the Snukals liable for Perlin's injuries based on the Snukal's establishment and implementation of policies and procedures is an impermissible attempt to hold the Snukals liable in their capacities as officers, directors, or shareholders. (*Frances T. v. Village Green Owners Assn., supra,* 42 Cal.3d at pp. 503-504.)

1. Evidentiary Objections to Mr. Snukal's Declaration

Plaintiffs filed evidentiary objections to four statements in Mr. Snukal's declaration filed in support of his motion for summary judgment: 1. "Fountain View, Inc. was a corporation which operated Long Term Care Facilities in California and Texas. Fountain View, Inc. is not a party to this action." 2. "Co-Defendant Fountain View Management, Inc. was originally incorporated in December 1988 and ceased operating in approximately March 1998." 3. "I was not an officer, director or managing agent of Woodland Care Center in March 2002." 4. "I do not and have not participated in the daily operations of the skilled nursing facility known as Woodland Care Center." Plaintiffs objected to all four statements on the ground that they lack foundation, and to the last three on the ground that they contradict Mr. Snukal's deposition testimony. The trial court overruled each objection. Plaintiffs contend the trial court erred in overruling their objections.

If there were an error with respect to the first two statements, it is harmless, as the statements are irrelevant to any issue on appeal concerning Mr. Snukal's motion for

summary judgment. As to the third and fourth statements, plaintiffs fail to indentify, and we fail to discern, the foundation that Mr. Snukal would have to establish to testify that he was not an officer, director, or managing agent of Woodland at a particular time or that he never participated in the daily operations of Woodland. Such information is within Mr. Snukal's personal knowledge. The objection that the statements lack foundation was properly overruled.

The third and fourth statements do not contradict Mr. Snukal's deposition testimony. None of the cited testimony addresses whether Mr. Snukal was an officer, director, or managing agent of Woodland in March 2002, and none of the cited testimony concerns whether he participated in the daily operations of Woodland. Accordingly, the trial court properly overruled this objection.

2. Evidentiary Objections to Mrs. Snukal's Declaration

Plaintiffs also filed the same evidentiary objections to four statements in Mrs. Snukal's declaration filed in support of her motion for summary judgment that plaintiffs filed with regard to Mr. Snukal's declaration: 1. "Fountain View, Inc. is not a party to this action." 2. "Fountain View Management, Inc., which is a party to this action, was originally incorporated in December 1988, but ceased operation in March 1998." 3. "I was not an officer, director or managing agent of Woodland Care Center in March of 2002." 4. "In March 2002, I did not participate in the daily operations of the skilled nursing facility known as Woodland Care Center." Plaintiffs objected to all four statements on the ground that they lack foundation, and to the last two on the ground that they contradict Mrs. Snukal's deposition testimony. The trial court overruled each objection. Plaintiffs contend the trial court erred in overruling their objections.

As with the objections to Mr. Snukal's declaration, any error with respect to the first two statements is harmless, as the statements are irrelevant to any issue on appeal concerning Mrs. Snukal's motion for summary judgment. As to the third and fourth statements, again as with the objections to Mr. Snukal's declaration, plaintiffs fail to indentify, and we fail to discern, the foundation that Mrs. Snukal would have to establish

to testify that she was not an officer, director, or managing agent of Woodland at a particular time or that she never participated in the daily operations of Woodland. Such information is within Mrs. Snukal's personal knowledge. The objection that the statements lack foundation was properly overruled.

The third and fourth statements do not contradict Mrs. Snukal's deposition testimony. None of the cited testimony involves whether Mrs. Snukal was an officer, director, or managing agent of Woodland in March 2002. Mrs. Snukal's cited testimony deals with her positions as an officer of Summit Care, and as an officer, director, and, apparently, a consultant of Fountain View, Inc. The cited testimony also does not address whether Mrs. Snukal participated in the daily operations of Woodland in March 2002. Mrs. Snukal testified that she had "some responsibilities for oversight of operations" or that she managed operations for Summit Care and Fountain View, Inc., not that she established relevant policies for Woodland or participated in Woodland's daily operations. Accordingly, the trial court properly overruled the objections.

III. Plaintiffs' Attorney Fees

Plaintiffs contend they were entitled to an award of attorney fees against Summit Care under section 15657. The trial court properly denied attorney fees.

A. No Right to Attorney Fees

"We review the issue of statutory interpretation de novo. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251 [48 Cal.Rptr.2d 12, 906 P.2d 1112].)" (*Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 683.) "'When construing a statute, we must "ascertain the intent of the Legislature so as to effectuate the purpose of the law."' (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977 [90 Cal.Rptr.2d 260, 987 P.2d 727], quoting *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [20 Cal.Rptr.2d 523, 853 P.2d 978].) 'The words of the statute are the starting point.' (*Wilcox*, at p. 977.) If the words are 'clear and unambiguous,' then we need look no further. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d

299].) If, however, the statutory language is not clear, then 'we may resort to extrinsic sources, such as the legislative history.' (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213 [105 Cal.Rptr.2d 407, 19 P.3d 1148].)" (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 531.)

Section 15657 provides:

"Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

"(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term 'costs' includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

"(b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

"(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer."

Civil Code section 3294 provides, in pertinent part:

"(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

"(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious

disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation."

Following the verdict in favor of plaintiffs, plaintiffs moved for $781,945.25 in attorney fees pursuant to section 15657. Plaintiffs argued that they were entitled to attorney fees under section 15657 because the jury found by clear and convincing evidence that one or more of Summit Care's employees acted recklessly in the medical or custodial care of Perlin, and the parties had stipulated that Summit Care ratified the acts and omissions of its employees. The jury found causation under a preponderance of the evidence standard, but was unable to reach a verdict for causation under the clear and convincing evidence standard. The trial court denied plaintiffs' motion for attorney fees on the ground that a showing of only recklessness—and not "oppression, fraud, or malice"—by clear and convincing evidence was insufficient.

On appeal, plaintiffs argue that section 15657 provides for an award of attorney fees against an employer based on the conduct of its employee upon a showing of recklessness by clear and convincing evidence, and a showing that the employer ratified the employee's conduct. Summit Care responds that section 15657's required establishment of liability by clear and convincing evidence includes the proof of causation by clear and convincing evidence, which proof plaintiffs failed to make. Summit Care contends that we may affirm the trial court's denial of plaintiffs' attorney fees motion on this ground, even though it was not the basis for the trial court's holding, because an appellate court will not disturb a decision that is correct in law merely because it was based on a wrong reason. Plaintiffs respond that although section 15657 requires that liability be proved by clear and convincing evidence, causation is distinct from liability and need only be established by a preponderance of the evidence.

If section 15657 requires a showing of causation by clear and convincing evidence, we may affirm on that ground, even if the trial court rested its holding on

another, incorrect ground.[6] "'The fact that the action of the court may have been based upon an erroneous theory of the case, or upon an improper or unsound course of reasoning, cannot determine the question of its propriety. No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' [Citation.]" (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19; *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32 ["We are required to uphold the ruling if it is correct on any basis, regardless of whether such basis was actually invoked"].)

In construing section 15657, we need not resort to external sources, as the section's words are clear and unambiguous. (*Hess v. Ford Motor Co., supra*, 27 Cal.4th at p. 531.) Section 15657 provides for enhanced remedies for violations of the Act. Under subdivision (a) of section 15657, plaintiffs may recover their attorney fees. Under subdivision (b) of section 15657, plaintiffs may recover pre-death pain and suffering capped at $250,000 pursuant to Civil Code section 3333.2, subdivision (b). To qualify for these additional remedies, the Legislature has required proof of liability under a heightened standard of proof – proof by clear and convincing evidence.[7]

"Liability" under section 15657 includes as an element "causation," which, as all elements of liability, must be proved by clear and convincing evidence for purposes of an

---

[6] Because we hold that section 15657's requirement of proof of liability by clear and convincing evidence includes a required showing of causation by clear and convincing evidence, we need not decide whether section 15657 also requires a finding of oppression, fraud, or malice—in addition to recklessness—by clear and convincing evidence to recover attorney fees from an employer for the ratified acts of the employer's employee.

[7] Summit Care has not argued that damages were not recoverable in this case under section 15657, subdivision (b).

award of attorney fees. (See *Ulloa v. McMillin Real Estate & Mortgage, Inc.* (2007) 149 Cal.App.4th 333, 338 [“‘“‘Causation’ is an essential element of a tort action. Defendants are not liable unless their conduct . . . was a ‘legal cause’ of plaintiff’s injury. [Citations.]” [Citations.]’”) That causation must be proved by clear and convincing evidence in order to recover attorney fees is supported by Judicial Council of California Civil Jury Instructions (2008) (CACI) No. 3105, entitled “Neglect—Essential Factual Elements—Enhanced Remedies Sought—Employer Defendant (Welf. & Inst. Code, §§ 15657, 15610.57.” Unmodified, CACI No. 3105 provides that to establish a claim under the Act, a plaintiff “must prove . . . by clear and convincing evidence: [¶] . . . [¶] 6. That the employee[’s][s’] conduct was a substantial factor in causing [*name of plaintiff/decedent*]’s harm . . . .”[8]

In arguing that the “clear and convincing evidence” standard does not apply to the element of causation, plaintiffs state that the Act does not create a cause of action, but provides for additional remedies when elder neglect is proved in connection with an underlying cause of action unrelated to the Act’s provisions. Plaintiffs contend that it follows that causation is not an aspect of a defendant being “liable” under section 15657 because causation must be proved in connection with the underlying cause of action. (See *Berkley v. Dowds* (2007) 152 Cal.App.4th 518.) Thus, according to plaintiffs, the liability that must, under section 15657, be established by clear and convincing evidence is only for the enhanced remedy for recklessness, oppression, fraud, or malice in the commission of neglect and not for other elements of the underlying wrong, such as causation.[9]

---

[8] At plaintiffs’ instigation, the trial court instructed the jury with a modified version of CACI No. 3105 that told the jury that it was to decide the issue of causation under the preponderance of the evidence standard. The jury had two verdict forms for causation—one with a preponderance of the evidence standard and the other with the clear and convincing evidence standard. (See fn. 10, *post.*)

[9] Whether a cause of action can be brought under the Act or whether the Act merely provides for enhanced remedies has been the subject of some comment. (Buhai and

The court in *Berkley v. Dowds, supra,* 152 Cal.App.4th 518, cited by plaintiffs, does state that "[t]he Act does not create a cause of action as such, but provides for attorney fees, costs and punitive damages under certain conditions." (*Id.* at p. 529, citing *ARA Living Center-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1563-1564 and section 15657.) But that position is inconsistent with the California Supreme Court's dicta. In *Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, the Supreme Court described its then recent decision in *Delaney v. Baker* (1999) 20 Cal.4th 23, 40 as "concluding that a *cause of action* for 'reckless neglect' under the . . . Act . . . , is distinct from a cause of action 'based on professional negligence' within the meaning of section 15657.2." (*Id.* at p. 116, italics added.)

More recently, in *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, the Supreme Court considered "whether the procedural prerequisites to seeking punitive damages in an action for damages arising out of the professional negligence of a health care provider, codified at Code of Civil Procedure section 425.13, subdivision (a) (section 425.13(a)), apply to punitive damage claims in actions alleging elder abuse subject to heightened civil remedies under" the Act. (*Id.* at p. 776.) Plaintiffs point to the court's statement that section 425.13 did not apply "to causes of action seeking heightened remedies under the Elder Abuse Act . . . ." (*Id.* at p. 785, fn. 8.) But the court, citing section 15657, then said, "regardless of its language, *Central Pathology* [*Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181] affords no basis for concluding the Legislature intended its reference in section 425.13(a) to 'professional negligence' to encompass elder abuse, let alone as yet uncreated *statutory causes of action for elder abuse* committed with recklessness, oppression, fraud or malice."

Gilliam, Jr., *Honor Thy Mother and Father: Preventing Elder Abuse Through Education and Litigation* (2003) 36 Loyola L.A. L.Rev. 565, 572-573 [noting the conflict and contending that a cause of action may be brought under the Act].) In *Smith v. Ben Bennett, Inc.* (2005) 133 Cal.App.4th 1507, the court observed that "We are not convinced that a Platonic approach—under which . . . either a 'cause of action' or a plea for 'enhanced remedies'—is fruitful. . . . An elder abuse claim could be a 'cause of action' for some statutory purposes but not others." (*Id.* at pp. 1524-1525.)

(*Covenant Care, Inc. v. Superior Court, supra,* at p. 786, italics added.) The court also specifically referred to "Elder Abuse Act causes of action" (*id.* at p. 788), to "an Elder Abuse Act action" (*id.* at p. 789), to "Elder Abuse Act claims" (*id.* at p. 790), and to "an action under the Elder Abuse Act" (*ibid.*).

The Supreme Court's language in *Barris v. County of Los Angeles, supra,* 20 Cal.4th 101 and *Covenant Care, Inc. v. Superior Court, supra,* 32 Cal.4th 771 is authority for the proposition that the Act creates an independent cause of action. (See *Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82 ["The elements of a cause of action under the Elder Abuse Act . . . are statutory . . . ."]; *Benun v. Superior Court* (2004) 123 Cal.App.4th 113, 119 [recognizing "causes of action against health care providers for 'custodial elder abuse' under the Elder Abuse Act"]; *Wolk v. Green* (N.D. Cal. 2007) 516 F.Supp.2d 1121, 1133 ["A civil cause of action under the Elder Abuse statute is governed by California Welfare and Institutions Code section 15657 . . ."].) It is noteworthy that when the Legislature added Article 8.5 to the Act, of which article section 15657 is a part, it labeled the article, "Civil Actions for Abuse of Elderly or Dependent Adults." (Stats, 1991, c. 774 (SB 679), § 1; see also CACI 3100, Directions For Use (Feb. 2008), p. 284 ["The instructions in this series are not intended to cover every circumstance in which a plaintiff can bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act"] .)

We reject plaintiffs' argument that a violation of the Act does not constitute an independent cause of action. Accordingly, plaintiffs' failure to obtain a verdict establishing causation—one element of liability—by clear and convincing evidence, precludes an award of attorney fees. Thus, the trial court correctly denied plaintiffs' motion for attorney fees.

B. No Right to Retrial

Plaintiffs contends that if, in order to obtain attorney fees against Summit Care, plaintiffs must establish causation under the clear and convincing evidence standard of proof, they are entitled to a retrial because the jury could not reach a verdict on that issue.

Summit Care argues that the invited error doctrine prevents plaintiffs from obtaining a new trial for the purpose of proving causation by clear and convincing evidence.

"Under the doctrine of 'invited error' a party cannot successfully take advantage of error committed by the court at his request . . . . In the present case, therefore, defendant cannot attack a verdict resulting from an erroneous instruction which it prompted. [Citations.]" (*Jentick v. Pacific Gas & Elec. Co.* (1941) 18 Cal.2d 117, 121.) "Defendant may not avoid the application of the doctrine by asserting that the error was not deliberately or willfully induced. The good faith of defendant is immaterial. It is incumbent upon counsel to propose instructions that do not mislead a jury into bringing in an improper verdict." (*Id.* at p. 122.)

At plaintiffs' request, and over Summit Care's objection, the trial court modified CACI No. 3105 and instructed the jury that plaintiffs needed only to prove causation for their elder neglect claim under the preponderance of the evidence standard. Noting Summit Care's position that "liability" under section 15657 included causation and damages, the trial court approved a special verdict form that asked the jury to determine causation for the elder neglect claim under both the preponderance of the evidence and the clear and convincing evidence standards.[10] As noted, the jury found causation under the preponderance of the evidence standard and did not return an answer under the clear and convincing evidence standard. Accordingly, plaintiffs are responsible for the erroneous instruction on causation and may not take advantage of the error by obtaining a

---

[10] Special Verdict Form No. 1, Elder Abuse and Dependent Adult Neglect, asked the jury in question number six, "Do you find, by a preponderance of the evidence, that the conduct of one or more of the employees of Summit Care-California, Inc. dba Woodland Care Center, was a substantial factor in causing harm to Helen Perlin." The jury was asked in question number seven, "Do you find, by clear and convincing evidence, that the conduct of one or more of the employees of Summit Care-California, Inc. dba Woodland Care Center, was a substantial factor in causing harm to Helen Perlin."

new trial. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403; *Jentick v. Pacific Gas & Elec. Co.*, *supra*, 18 Cal.2d at pp. 121-122.)[11]

IV. Interest

Summit Care contends that the trial court erred in awarding plaintiffs interest for the period between the jury's verdict and the entry of the judgment. Based on the authority of *Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 935 (see also Code of Civ. Proc. § 685.110) we affirm the trial court's determination awarding plaintiffs interest for the period between the jury's verdict and entry of the judgment.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.

---

[11] Even if the invited error doctrine did not bar retrial, plaintiffs' one-sentence, perfunctory request for retrial of the causation issue that cites no supporting authority constitutes a forfeiture of the issue. (*Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384; *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.*, *supra*, 86 Cal.App.4th at p. 284.)